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September 28, 2007

Ms. Mary P. Levine
Acting General Counsel
Michigan State Housing Development Authority
735 E. Michigan Avenue
P.O. Box 30044
Lansing, MI 48912

RE: Comments on Proposed Changes to the QAP

Dear Ms. Levine:

I would like to thank MSHDA for making the proposed changes to the tax credit QAP available on such a wide-scale basis. The Authority's consistent review of and changes to the QAP help to keep the allocation of credits up to date with the shifting needs of the affordable housing market, other financing sources, and of developers. This also shows MSHDA's intent to receive comment from all interested areas, and to make the plan work as best as it can.

We would like to submit the following comments for review and consideration by the Authority.

I. SECTION VI: FUNDING ROUNDS AND AVAILABILITY OF CREDIT

A. SUB-SECTION A: FUNDING ROUND SCHEDULE

With such major proposed changes to the QAP, the December 27, 2007, date is too close. Assuming that the earliest a revised QAP could be put in place is October, tax credit applications under a new QAP for 2007 do not appear realistic. An April, 2008, date for applications under a new QAP will give owners time to make appropriate changes to their development(s).

B. SUB-SECTION A: DELIVERY

While I realize some of the problems that the Authority and several developers ran into with the September, 2006, deliveries, I would like to make you aware of what happened on our end.

The day before the tax credit applications were due, we delivered two boxes to DHL well before DHL's cut-off time. Each box had one tax credit application. One box was put on top of the other and given to a DHL employee at a DHL office.

At around 10 am the next day (the due date), one of the applications was delivered and signed for at MSHDA's office. The other was not. DHL could not locate the second package. We typically make several originals (not just copies, but originals). I personally left the Detroit area at around 1 pm and drove a second original of the DHL-lost application to Lansing.

However, I got caught in the massive traffic jam that, I am guessing, has sparked this proposed delivery requirement. I called back to the office and had my wife drive up another original by way of Grand River to by-pass the traffic jam. Fortunately, we each made it before 4:45 pm and were able to submit an application.

The proposed delivery requirement now increases the risk of a development not reaching MSHDA's office in time. Similar to the situation I outlined above, what if the delivery service has a plane problem, or a weather problem?

We all know that the cut-off time is 5 pm. It's a firm time. It is not negotiable. For well over a decade, MSHDA's policy of locking the doors at 5 pm has seemed to work just fine. There are enough things out of the developer's control that create risk. Let's not make it worse. We are dealing with multi-million dollars developments with tens of thousands of dollars, plus reputations, at risk. Developer's can figure out how to get the apps in. If MSHDA just sticks by its published, well-known, reasonable rule, we will all figure it out just as we have in the past.

II. SECTION VI – B: ALLOCATION LIMITS

A. LIMIT OF TWO APPLICATIONS PER FUNDING ROUND FROM A SPONSOR

This limits successful sponsors with good track records. Tax credits ultimately are for the benefit of those in need of safe, sanitary, decent, affordable housing. Geographic limits and holdbacks will ensure that credits are spread throughout the State. MSHDA is asking for owners and development teams with experience and positive results in building tax credit housing, but then is limiting the number of projects that they can build. These two goals appear to be contradictory.

B. LIMIT ON PER PROJECT CREDITS

The \$750,000 per project limit artificially limits the number of units. With credit prices falling, fewer units can be done. As the number of units decreases, the per unit cost tends to increase. Recommend a per project limit of \$950,000 so development can at least get close to the 50 unit level.

C. QUESTION FOR CLARIFICATION

For DHHP single project limits: Does the 30% credit limit apply to each category individually, or is it 30% of the sum of all the categories? That is, is the sub-category (a) limit 30% of the 40% holdback, and the sub-category (b) limit 30% of the 20% holdback? If so, this would result in sub-category (a) having twice the limit of the others.

III. SECTION VIII: ELIGIBILITY REQUIREMENTS

A. SUB-SECTION A: THRESHOLD REQUIREMENT FOR 10% OF UNITS TO BE SPECIAL NEEDS/SUPPORTIVE HOUSING

Question for Clarification: Since the phrase "with rents structured at or below 30% of AMI" comes at the end of the sentence, this phrase seems to apply to the previous clause about the definition of Supportive Housing rents. Does this requirement apply only if a development has 30% units in its AMI structure? Or does it mean that all tax credits developments approved under the new QAP must start reserving 10% of the units for Special Needs, and that those units will be at 30% of AMI? If the sentence were to read "Ten percent (10%) of all units in any given project *that has any rents structured at or below 30% of AMI* (that is not...)," then it would be clear that any project with 30% AMI rents would be subject to this new 10% Special Needs requirement, and that any project without 30% rents would not be subject to it.

If the Authority's intent is to have this restriction apply *just* to tax credit developments that put 30% AMI rents in their rent structure, I suspect that many developments will try to stay away from the 30% AMI level, thus working against MSHDA's emphasis on homeless and Special Needs units. If the intent is to have it apply to all tax credit developments, several issues arise:

1. Debt and equity underwriters will most likely increase the vacancy rate for projection purposes because of a possible 60 day delay in re-renting units. With the vacancy rate up, NOI drops, and the amount of supportable debt drops. This increases the need for gap funding.
2. To be conservative, the same underwriters will most likely take the highest rent units and assume that these units will drop down to 30% AMI rent level as vacancies occur. This will decrease revenues and decrease NOI. As noted above, as the NOI drops, the amount of supportable debt drops. Combined with the vacancy issue noted above, we now have a significant drop in first mortgage debt and a much greater need for other funding.
3. There could be significant confusion in the tax credit application. For ease of showing an example, let's assume that a development has 30 units: 10 units at 30% of AMI, 10 at 40% of AMI, and 10 at 60% of AMI. Three of the units are subject to the 10% Special Needs rule. To be conservative, underwriters will assume that all 3 will come out of the 60% AMI units. For projection purposes, there will then be 13 units at 30% of AMI, 10 at 40% of AMI, and 7 at 60% of AMI. In the tax credit application, will:
 - a) 10 units be shown with 60% AMI rents, or

- b) 7 units be at 60% of AMI with 60% AMI rents and 3 at 60% of AMI with 30% AMI rents?
- 4. If it is a), the rent schedule will not match the projections.
- 5. Also, will the market study have to show a demand for:
 - a) 10 units at 30% of AMI, 10 at 40% and 10 at 60%; or,
 - b) 10 at each level, plus a second scenario with 13 at 30% of AMI and 7 at 60% of AMI with 3 of the 30% units showing a demand for some category of special needs?
- 6. If the developer has 10 units at 60% of AMI, theoretically, all 10 of those units could be at 60% of AMI for the next 15 years; or, theoretically, 7 could be at 60% of AMI and 3 could be at 30% of AMI for the next 15 years. If the market study shows III.A.5.a) above, the rents will not match the rents in the tax credit application and it will be either kicked out or receive a negative point for clarification. If it is number III.A.5.b) above, what Special Needs category do they have to target?
- 7. Is there an approved MOU that developers can use? Is there a list of approved providers? Will the service providers be able to review, approve, find funding for, and execute the MOU within 60 days?
- 8. We have found that many Special Needs tenants at or below 30% of AMI typically do not have enough income to pay even the 30% rents, let alone utilities. Will there be a project-based or tenant-based subsidy available? Does the development have to take the 30% Special Needs tenant regardless of ability to pay?
- 9. Would the development have to take *any* qualified Special Needs tenant, that is, could the project in this example end up with three Special Needs tenants with three distinct needs and three different providers governed by three different MOUs? If so, this would appear very burdensome when compared to a Special Needs set-aside development that is not required to meet such a large variety of Special Needs clients.

Given these issues, we respectfully request that MSHDA continue with the requirements of a Special Needs set-aside to deal with homeless and Special Needs clients and not implement this 10% requirement for non-Special Needs developments.

B. SUB-SECTION A-18: LETTERS FROM 3 SYNDICATORS

I believe that the Authority is trying to ensure that a sponsor will obtain the highest tax credit price possible for that particular development. By doing this, public resources are leveraged to the highest extent possible. The highest and best use of public resources should always be achieved. All

things being equal, obtaining letters from 3 different syndicators would help to achieve this goal.

However, all things are not equal.

In short, I agree with comment 3-c on page 4 of the letter sent by Tim Thorland of Southwest Housing Solutions. Although the Authority can require any number of letters, an equity provider cannot be forced to provide a one. In a case where a non-profit has received predevelopment funding from a particular syndicator, and where that non-profit has worked with the same syndicator on other developments, a second or third syndicator knows that there is virtually no chance of it being able to purchase the credits. Assuming that these two syndicators could be persuaded to provide letters which, in their minds, are of no value to them, how will this reflect on the perception of the Authority's underwriting requirements over the years? Capitalism still works in America, perhaps not perfectly, but it still works. Over time, syndicators know that they are in competition with each other. If there were only two syndicators in the United States that purchased tax credits, I would be concerned about tax credit prices. However, given the fact that tax credit prices were in the \$0.45 to \$0.50 range in the very early 90s, rose above the \$0.90 level as recently as the last two years, are now dropping back down a bit, and that there are dozens of syndicators in the US, tells me that competitive forces are at work. I don't believe government intervention is needed here.

C. SUB-SECTION A-18: GREEN COMMUNITIES

This is a very laudable goal. However, since it is not clear what design changes are needed, requiring this by late December or by early 2008 does not appear realistic. If it increases costs, developers start to run into the quandary of higher costs v. tax credit allocation limits. If it reduces long-term operating expenses, owners, property management companies, and funders need to know by how much and for how long. Combined with potential underwriting issues over higher vacancies and lower NOI as noted previously in this letter, sponsors, at the very least, need more time to adjust.

D. SUB-SECTION A-18: CNA FOR ACQUISITION/REHAB PROJECTS

Many of the acq/rehab projects on which we have worked involve a full gut rehab of the building. Since this involves all new systems, windows, most of the roofing, demolition of many interior walls, etc., a CNA does not appear to serve any purpose. If this is the case, perhaps a certification from the architect would suffice for full gut rehabs in place of the CNA.

IV. SECTION IX: EVALUATION CRITERIA

- A. WE ENTHUSIASTICALLY SUPPORT THE ELIMINATION OF THE LOTTERY (EXCEPT AS A LAST-RESORT TIE-BREAKER). *THANK YOU!***

V. ITEMS MENTIONED BY SOUTHWEST HOUSING SOLUTIONS

In addition, we echo and support the following statements from the Southwest Housing Solutions September 24, 2007, letter by referencing the SHS item and page number, and then the section of the proposed QAP:

- A. ITEM 2-A ON PAGE 2 REGARDING SECTION VI. B. LIHTC ALLOCATION LIMITS EXCEPT FOR THE TWO APPLICATIONS PER SPONSOR LIMIT. (SEE COMMENT IN THIS LETTER, SECTION II.A ABOVE.)**
- B. ITEM 2-B ON PAGE 3 REGARDING SECTION VI. B. LIHTC ALLOCATION PER PROJECT LIMITS EXCEPT THAT THE LIMIT SHOULD BE \$950,000 PER PROJECT.**
- C. ITEM 2-C ON PAGE 3 REGARDING SECTION VI. B. LIHTC ALLOCATION, ESPECIALLY SUPPORTING MERGING THE HOLDBACKS.**
- D. ITEM 3-B ON PAGE 4 REGARDING SECTION VIII. A. 2 ELIGIBILITY REQUIREMENTS AND GENERAL CONTRACTORS.**
- E. ITEM 3-D ON PAGE 5 REGARDING SECTION VIII.A.19 – GREEN BUILDING.**
- F. ITEM 4 ON PAGE 5 REGARDING SECTION IX. EVALUATION CRITERIA – CORRECTION OF MINOR DEFICIENCIES.**
- G. ITEM 5 ON PAGE 5 REGARDING SECTION X. UNDERWRITING STANDARDS. 2 – CALCULATION OF DEVELOPER FEE:**

We support leaving project reserves in the calculation of the developer fee. MSHDA's should always attempt to stretch public resources as far as possible. However, I believe that the use of these resources must be considered in the short term and in the long term. Providing incentives to reduce project reserves only puts the highest and best use of public resources at risk in the long term. (I suspect that the Authority does not see this as an incentive to reduce project reserves, but I also suspect that many developers *do and will* see it that way.)

VI. OTHER ITEMS

In reading the goals that MSHDA wants to achieve and its responsibility for allocating a public resource, I detect, perhaps erroneously, a lack of belief that competitive forces and private self-interest will prevail. Private enterprise has proven time and time again that these forces work, not perfectly, but far better and more quickly than any other nation or regulation.

For example, although MSHDA allocates credits, the syndicator is liable directly for probably 50% to 70% of the entire development cost. This gives the syndicator far more incentive than anyone else involved in the project to ensure an experienced and credible development team. It is not that everyone else does not have an interest or risk, it's just that the syndicator has more money at risk than anyone else. If we extend this type of thinking out a bit, there may be other rules that are really not needed and that can prevent some of the conflicts such as:

1. The requirement for sponsors/development team members with strong track records to help ensure more viable developments works against restricting the number of applications that these experienced entities can submit.
2. The unintended incentive for developers to reduce the amount of reserves contradicts existing Authority underwriting requirements to help build financially sound developments.
3. The requirement for more syndication letters ignores the fact that experienced development team members (for which the Authority is looking) will determine which syndicator would be best for that specific project.

Overall, as I take a larger overview of what the QAP is trying to accomplish, I see the following goals in various forms:

- A. AFFORDABLE HOUSING TO MEET IRS REQUIREMENTS**
- B. AFFORDABLE HOUSING TO MEET REQUIREMENTS OF VARIOUS HOLDBACKS AND GEOGRAPHIC SET-ASIDES**
- C. CERTAIN QUALIFICATIONS OF DEVELOPMENT TEAM MEMBERS**
- D. WAGE AND LABOR LEVELS**
- E. GREEN DEVELOPMENT**
- F. JOB CREATION**
- G. SPECIAL NEEDS/HOMELESS**
- H. CONTROL OF DELIVERY OPTIONS**
- I. COMPETITION AMONG SYNDICATORS**

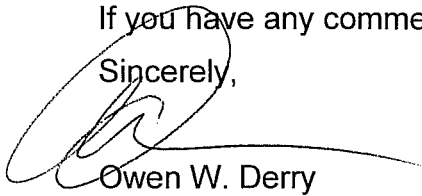
Each of these, especially those with a larger social impact, are very good goals. However, when taken in their entirety and all at once, and undertaken by the Authority, I believe that it will lead, and is already leading, to tremendous and very complex conflicts amongst varying goals, requirements, and agencies. This will result in actually achieving fewer of the stated goals and in sub-par developments.

I realize that there are many political realities and forces that affect the Authority. However, with MSHDA's main mission being affordable housing, I would suggest, for example, that other agencies and institutions would have a greater affect on job creation. Or, to look at it another way, would it be more effective for those entities chartered to help create jobs to start venturing into affordable housing?

A pin-pointed laser is far more effective in both the short term and the long term in cutting through problems. A very unfocused lights just illuminates the problems out there, but does not help us in solving them. Greater focus will lead to greater results.

If you have any comments or questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Owen W. Derry", with a large, sweeping loop at the end.

Owen W. Derry